



## International Covenant on Civil and Political Rights

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### Human Rights Committee

#### List of issues in relation to the fourth periodic report of Madagascar\*

##### Constitutional and legal framework within which the Covenant is implemented (art. 2)

1. Given that article 137 (4) of the Constitution establishes the primacy of the Covenant over the domestic laws of the State party, please indicate how often the Covenant has been invoked before and applied by the courts and administrative authorities of the State party. Where applicable, please provide examples of cases in which the Covenant has been invoked. Please also indicate what procedures are in place for the implementation of the Committee's Views under the Optional Protocol.

2. Please indicate whether the Independent National Human Rights Commission is operational and whether it has requested accreditation from the Global Alliance of National Human Rights Institutions. Please explain the steps taken to bring it into line with the principles relating to the status of national institutions for the promotion and protection of human rights (Paris Principles), particularly with respect to the appointment of its members and its financial autonomy, and provide information on the human and financial resources allocated to it. Please also explain the measures taken to establish the High Council for the Defence of Democracy and the Rule of Law.

##### States of emergency (art. 4)

3. In the light of the previous concluding observations (CCPR/C/MDG/CO/3, para. 13<sup>1</sup>), please indicate whether the legal provisions governing states of emergency have been revised to clarify which derogations from the Covenant are permitted in such emergencies and to define the guarantees relating to the implementation of such derogations.

##### Non-discrimination and equality between men and women (arts. 2, 3, 23, 25 and 26)

4. Please describe the measures taken to combat discrimination against women, including those taken to increase the participation and representation of women in

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\* Adopted by the Committee at its 118th session (17 October-4 November 2016).

<sup>1</sup> Unless otherwise indicated, paragraph numbers in parentheses refer to the previous concluding observations adopted by the Committee.



economic, political and public life, including in decision-making positions. Please provide information on the measures taken to tackle the gender pay gap. Please indicate the measures taken by the State party to amend or repeal discriminatory legislative provisions, particularly with regard to nationality, property and land administration, inheritance and marriage. Please also indicate whether there is any time frame for the adoption of the bills on gender equality, violence against women and nationality.

5. Does the State party plan to adopt comprehensive legislation prohibiting discrimination and containing a comprehensive list of prohibited grounds for discrimination, including discrimination based on sexual orientation and gender identity? Please provide information on discrimination based on ethnicity and caste in the State party. Please describe the measures taken by the State party to combat and prevent the stigmatization of and discrimination against (a) persons living with or affected by HIV/AIDS and (b) the lesbian, gay, bisexual and transgender (LGBT) community.

#### **Right to life (arts. 6 and 14)**

6. Given the adoption on 9 January 2015 of Act No. 2014-035 on the abolition of the death penalty, please indicate the status of the bill on alternatives to the death penalty and the timeline for its adoption. Please provide information on the alternative sentences proposed. Please also provide information on the timeline for the adoption of a bill on the ratification of the Second Optional Protocol to the International Covenant on Civil and Political Rights, aiming at the abolition of the death penalty.

7. Please respond to allegations of summary and extrajudicial executions committed in the State party by law enforcement officials, particularly in the context of operations to secure areas where cattle are stolen by armed groups. Please provide information about the investigations and prosecutions carried out, the convictions and penalties handed down to the perpetrators and the reparation awarded to the victims. Please also provide information on mob justice and lynching of suspected criminals by members of the general public and describe the measures taken to put a stop to such practices and to prosecute and punish the perpetrators.

8. Please provide updated information on the measures taken to give effect to the proposal to make abortion a minor offence, as mentioned in the State party's fourth periodic report (CCPR/C/MDG/4, para. 142). In the light of the Committee's previous concluding observations (para. 14), please provide information on how access to voluntary termination of pregnancy is ensured and provide clarification about the exceptions to the prohibition on abortion provided for by law. Please provide statistics on the number of cases in which legal abortions have been carried out and on cases in which they have been refused, as well as the grounds for those refusals. Please also provide statistical data on maternal mortality in the past four years. Please describe the steps taken to improve access to sexual and reproductive health services, to ensure that women are properly informed about and have access to contraceptives, to prevent unwanted pregnancy, to promote sexual and reproductive health education for adolescents and to reduce the maternal mortality rate.

#### **Harmful traditional practices and violence against women (arts. 3, 7 and 24)**

9. Please describe the measures taken to eliminate harmful traditional practices such as forced and early marriage, girl markets (*tse nan' ampela*), *moletry* (arranged early marriage in exchange for a dowry), polygamy and practices relating to the perpetuation of "the father's name and estate" through male heirs. Please explain the steps taken to enforce the requirement to register all marriages so as to monitor their legality. In the light of the previous concluding observations (para. 17), please provide information on the steps taken to combat the popular belief that still persists, especially in the Mananjary region, that having twins brings bad luck and to protect twins from ill-treatment and discrimination.

10. Please explain whether the State party plans to adopt legislation criminalizing all acts of violence against women, particularly domestic violence, marital rape and sexual abuse. Please provide information on the process of approving the national strategy to combat gender-based violence and on the measures taken to encourage reporting of cases of violence. Please provide information on the training of law enforcement officials, social workers and medical personnel on how to detect victims of domestic violence, as well as on whether there are a sufficient number of State-run shelters for victims. Please also provide up-to-date statistics on the number of complaints filed concerning different forms of violence against women and on the number of rulings handed down by the courts in this area.

**Prohibition of torture and cruel, inhuman or degrading treatment or punishment, summary and extrajudicial executions and enforced disappearances (arts. 3, 6, 7 and 24)**

11. Please indicate whether Act No. 2008-008 on the prohibition of torture and other cruel, inhuman or degrading treatment or punishment has been revised to include a range of penalties for acts of ill-treatment. Please indicate whether the Criminal Code and the Code of Criminal Procedure have been revised to incorporate the relevant provisions of the law against torture. Please provide information on steps taken to ensure in practice that confessions obtained under duress or torture are inadmissible as evidence before the courts.

12. In the light of the previous concluding observations (para. 19), please respond to reports of allegations of torture and inhuman or degrading treatment of persons during their arrest and while they are in police custody and provide information on the number of investigations, prosecutions and convictions in such cases and the remedies granted to the victims. Please provide statistical data on the number of complaints of torture and ill-treatment and the number of prosecutions and convictions handed down under Act No. 2008-008 on the prohibition of torture and other cruel, inhuman or degrading treatment or punishment.

13. Please provide information on the investigations and prosecutions carried out and the penalties imposed on perpetrators of human rights violations committed during the political crisis — including torture, summary and extrajudicial executions and enforced disappearances. Please provide statistics on the number of complaints lodged, the number of investigations launched and the number of criminal convictions or disciplinary measures handed down. Please provide information on the implementation of the road map for resolving the crisis, adopted in September 2011, and in particular on the process of national reconciliation and the establishment of a national solidarity fund.

14. Please indicate the steps taken by the State party to make corporal punishment unlawful in all places, including within the family.

**Liberty and security of persons (art. 9)**

15. Please describe the measures taken to ensure that fundamental legal safeguards for persons in detention are provided in practice, particularly the right to have access to a lawyer and a doctor and to contact family members. In the light of the previous concluding observations (para. 23), please provide information on measures taken by the State party to reduce excessively long periods of police custody and indicate whether there are any plans to reduce the permitted length of police custody, which can be extended for up to 12 days, including for minors. Please indicate the measures taken to ensure that the new provisions of the Code of Criminal Procedure on periods of police custody are effectively enforced and to prevent abuse in that area. Please comment on reports that, because of the low budget allocated by the State, complainants are obliged to cover the transportation costs

that criminal investigation officers incur in the course of investigations in order to make arrests, bring suspects before the public prosecutor or take them to prison.

16. Please provide information on steps taken to ensure that, in practice, pretrial detention is used only in exceptional cases and that the legally-established limits on the length of pretrial detention are respected. Please provide information on the number of complaints of wrongful pretrial detention and indicate whether the officers involved were held responsible, in accordance with article 614 of the Code of Criminal Procedure. Please explain whether all individuals detained for political reasons during the sociopolitical crisis have now been released.

**Right to a fair trial and independence of the judiciary (art. 14)**

17. Please describe the steps taken to establish the High Court of Justice, to strengthen the capacity of the judiciary and, in particular, to:

(a) Guarantee the independence of the judiciary, notably by ensuring that the Supreme Council of the Judiciary is free from any pressure or interference from the executive branch;

(b) Combat political influence and corruption;

(c) Guarantee access to justice for all, implement Decree No. 2009-970 regulating the provision of legal aid and establish the legal aid office provided for in the circular of 22 September 2010. In this respect, please provide statistics on the number of people receiving legal aid and provide information about the measures taken to strengthen community-based justice and to preclude logistical problems posed by the need for persons standing trial and criminal investigation officers to travel considerable distances;

(d) Reduce delays in the administration of justice and mitigate the lack of resources, personnel and proper training.

18. Please provide information on the extent of the use of “traditional justice” or “parallel justice” mechanisms that seem to be bolstered by the lack of proximity between “institutional” justice and citizens. Please explain the measures taken to effectively monitor the decisions issued by *Dina*, to ensure that they do not hear cases that do not fall within their jurisdiction pursuant to Act No. 2001-004, which establishes a requirement for approval of *Dina* court decisions by ordinary courts, and to ensure that all decisions taken by *Dina* courts are appealed before the ordinary courts.

**Treatment of persons deprived of their liberty (arts. 7 and 10)**

19. In the light of the previous concluding observations (para. 22) and the information provided by the State party (CCPR/C/MDG/4, paras. 175-219), please indicate the results of efforts to improve conditions of detention, including by constructing new buildings or renovating old ones; to reduce prison overcrowding; to increase the number of prisons with separate quarters for minors; to segregate persons in pretrial detention from convicted prisoners; to ensure access to health care and prevent deaths among detainees; and to provide detainees with better food. Please provide information on the bill on community service, on the use of alternatives to imprisonment and on efforts to combat the excessive use of pretrial detention. Please provide updated information on the processing of appeals or applications for judicial review that are pending before courts of first instance or courts of appeal. Please also clarify whether there is an independent, confidential mechanism in prisons for receiving complaints from prisoners. If so, please give examples, indicating the number of complaints received and the action taken on those complaints.

**Elimination of slavery and servitude (arts. 8 and 24)**

20. Please provide data on the extent of trafficking in the State party, particularly trafficking of women and children, including for the purposes of economic and sexual exploitation. Please also indicate what measures have been taken to identify, protect and rehabilitate victims. Please provide information on measures taken to implement the national action plan to combat human trafficking, which entered into force in 2015, and to allocate an adequate budget to the National Office to Combat Human Trafficking. Please also provide information on measures taken to enforce Act No. 2007-038 and Act No. 2014-040 on the punishment of human trafficking and the relevant legal provisions, including investigations, prosecutions, convictions and the penalties imposed on the perpetrators of human trafficking. Please provide information on measures taken to protect, and to prevent and punish the exploitation of, migrant workers, particularly those employed as domestic workers in the Middle East and North Africa, despite the adoption of provisions that prohibit sending persons abroad as domestic workers, which have been in force since 2013. Please indicate the measures taken to effectively regulate and monitor the practices of recruitment agencies so as to protect women migrant workers from abuse and exploitation.

21. Please provide information on the extent of the exploitation of children for purposes of forced labour, especially in domestic service, agriculture, mining and quarrying. Please provide information on the measures taken to eliminate forced labour and the worst forms of child labour and on investigations conducted, prosecutions brought and compensation awarded to victims. Please also provide information on the extent of child prostitution and on efforts undertaken to investigate cases of sexual exploitation of children and prosecute those responsible.

**Right to be recognized as a person before the law (arts. 7, 13, 16 and 24)**

22. Please provide information on the measures taken to improve the birth registration rate and the issuance of birth certificates. Please provide information on the measures taken by the State party to prevent statelessness.

**Refugees and asylum seekers (art. 13)**

23. Please indicate whether there are any plans to amend Decree No. 94-652 of 11 October 1994 and to establish an asylum procedure, including a procedure for the determination of refugee status, and a legal framework for regulating asylum in accordance with international standards. Please indicate whether the State party intends to establish an office for refugees and stateless persons, as provided for in Decree No. 1962-001. Please explain the procedures currently in place, including with regard to deprivation of liberty, to deal with asylum seekers who appear before immigration officials without valid documents or visas. Please specify what steps have been taken by the State party to uphold, de jure and de facto, the principle of non-refoulement with respect to foreign nationals expelled from the State party.

**Freedom of expression and right to freedom of assembly and association (arts. 19, 21 and 22)**

24. Please comment on allegations of censorship, intimidation and harassment faced by journalists and political opponents. Please provide information on the investigations conducted, the prosecutions brought and the penalties imposed on the perpetrators of such acts. Please provide information on the content and scope of the Communications Code adopted on 7 July 2016 and the penalties established therein, and indicate whether the Code decriminalizes press offences, defamation, slander, insult and libel, as indicated in the State party's fourth periodic report (CCPR/C/MDG/4, para. 265). Please indicate whether the

State party intends to revise Act No. 2014-006 on combating cybercrime and to repeal the provisions relating to defamation that restrict the enjoyment of the right to freedom of expression and the right to information.

25. Please comment on allegations of security forces preventing peaceful demonstrations from being held, including meetings of political opponents, and indicate the measures taken to guarantee freedom of assembly in practice and ensure that any restriction of that freedom is in compliance with the Covenant. Please also comment on reports of frequent use of excessive force to disperse crowds.

**Participation in public affairs and the fight against corruption (art. 25)**

26. Please provide information on the efforts made to ensure that future elections run smoothly and that all members of the electorate are able to exercise their right to vote, including by ensuring that women and persons with disabilities fully participate in the election process. Please explain whether the State party plans to review electoral boundaries to ensure greater equality between districts and to strengthen the Independent National Electoral Commission and the dispute resolution process to ensure that all citizens have access to complaint procedures and effective remedies.

27. Please describe the specific measures adopted to combat corruption in political circles and in the judiciary. Please indicate the measures taken to ensure that the Independent Anti-Corruption Office is fully independent and provide information on the investigation of corruption cases and the disciplinary and judicial penalties handed down in those cases during the past five years.

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